

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

MARISOL B. BURBANO, et al.,

Plaintiffs,

v.

Action No. 3:08-CV-644

JAMES A. BURBANO

Defendant

v.

JAMIE-ALVARO BURBANO

Third Party Intervener.

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant's Notice of Removal and Counterclaim (Docket No. 1). Defendant requests removal of the entitled matter from the District Court for Tulsa County, Oklahoma to the Eastern District of Virginia based on both federal question and diversity jurisdiction. For the reasons set forth in this Opinion, Defendant's request is DENIED.

BACKGROUND

Defendant filed a Notice of Removal in this Court on October 6, 2008. While providing numerous documents, including case materials for a separate state case currently pending in Tulsa, Oklahoma, the Defendant failed to provide state court pleadings to accompany his Notice of Removal. Despite this omission, Defendant's Notice states that the underlying case sought to be removed concerns a protective order against James Alvaro Burbano.

### DISCUSSION

In order for a defendant to remove a civil action or criminal prosecution from a State Court, they must “file in the district court of the United States for the district and division within which such action is pending a notice of removal.” 28 U.S.C. § 1446 (a) (2008). The notice of removal must contain “a short and plain statement of the grounds for removal, together with a copy of all process, pleadings and orders served upon such defendant . . . in such action.” Id.

The case which Defendant has attempted to remove is apparently pending in the District Court in and for Tulsa County, Oklahoma. The proper district court of the United States for this particular jurisdiction is the United States District Court for the Northern District of Oklahoma, not this Court. For this reason, this case may not be removed to this Court.

### CONCLUSION

For the foregoing reasons, Defendant’s Motion for Removal is DENIED, and the case is REMANDED to the Tulsa County District Court.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

<p style="text-align: center;"><u>/s/</u> James R. Spencer Chief United States District Judge</p>
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ENTERED this 10<sup>th</sup> day of October 2008